

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

CLIFFSTAR CORPORATION,

Plaintiff,

v.

ORDER
09-CV-690

ALPINE FOODS, LLC and
JENSEN CRANBERRY BOGS, INC.,

Defendants.

This case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1). On October 14, 2009, plaintiff filed a motion for summary judgment. On January 14, 2010, Magistrate Judge McCarthy filed a Report and Recommendation, recommending that plaintiff Cliffstar's motion be granted in part and denied in part.

Both parties filed objections to the Report and Recommendation on January 28, 2010 and responses were filed thereto. Oral argument on the objections was held on May 11, 2010.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court modifies the Report and Recommendation only to cite

an additional authority supporting summary judgment dismissing defendant Jensen's First Counterclaim. "New York law . . . establishes the following elements of economic duress: (1) a threat, (2) which was unlawfully made, and (3) caused involuntary acceptance of contract terms, (4) because the circumstances permitted no other alternative As the district court correctly concluded, however, it is not duress to threaten to take action which is legally permissible." *Kamerman v. Steinberg*, 891 F.2d 424, 431–32 (2d Cir. 1989) (internal quotation marks and citations omitted). As modified above, the Court adopts the Report and Recommendation in its entirety.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report and Recommendation, plaintiff's motion for summary judgment is granted in part to dismiss Jensen's First Counterclaim and to expedite proceedings as Magistrate Judge McCarthy deems appropriate, but is otherwise denied.

This case is referred back to Magistrate Judge McCarthy for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: May 13, 2010